

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

V.

MARK CUBAN,

Defendant.

Civil Action No. 3:08-cv-02050 (SAF)

**DEFENDANT MARK CUBAN’S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56(c), Defendant Mark Cuban, by and through his undersigned counsel, hereby files this Motion for Summary Judgment as to all claims asserted by Plaintiff Securities and Exchange Commission in this action. Mr. Cuban submits the following Summary in compliance with Local Rule 56.3(a)(1):

SUMMARY

In order to prove the claims that it brings against Mr. Cuban under Sections 10(b) and 17(a) of the Securities Exchange Act and Rule 10b-5, the SEC must demonstrate that Mr. Cuban, acting with scienter, received material, nonpublic information and then traded on it in breach of a duty owed to the source of the information and without disclosing that he would do so. Based on the evidence in this case, the SEC cannot prove, as a matter of law, that Mr. Cuban violated a duty owed to anyone, that the information was material or confidential, or that he failed to disclose his sale of Mamma.com, Inc. securities. Mr. Cuban's separately filed Memorandum of Law in Support of Defendant Mark Cuban's Motion for Summary Judgment contains all necessary citations to the

appendix to demonstrate the absence of genuine disputes of fact regarding the SEC's inability to prove these challenged aspects of its claims.

For all the reasons set forth above and in Mr. Cuban's Memorandum of Law, Mr. Cuban respectfully requests that this Court grant his Motion for Summary Judgment, dismiss Plaintiff's claims with prejudice, and grant him such other and further relief as this Court deems just and proper.

Dated: July 13, 2012
Washington, D.C.

Respectfully submitted,

By: /s/ Stephen A. Best
Stephen A. Best
D.C. Bar No. 428447
Brian D. Nysenbaum (*pro hac vice*)
D.C. Bar No. 977191
BROWNSTEIN HYATT FARBER
SCHRECK LLP
1350 I Street NW, Suite 510
Washington, D.C. 20005
Tel. (202) 747-0500
Fax (202) 296-7009
sbest@bhfs.com
bnysenbaum@bhfs.com

Lyle Roberts (*pro hac vice*)
D.C. Bar No. 464789
George E. Anhang (*pro hac vice*)
D.C. Bar No. 461936
COOLEY LLP
777 Sixth St., NW, Suite 1100
Washington, D.C. 20001
Tel. (202) 842-7855
Fax (202) 842-7899
lroberts@cooley.com
ganhang@cooley.com

Leslie A. Maria (*pro hac vice*)
D.C. Bar No. 484806
WHITE & CASE LLP
701 Thirteenth St., NW
Washington, D.C. 20005
Tel. (202) 626-3600
Fax (202) 639-9355
lmaria@whitecase.com

Christopher J. Clark (*pro hac vice*)
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Tel. (212) 906-1200
Fax (212) 751-4864
christopher.clark2@lw.com

Attorneys for Defendant Mark Cuban

OF COUNSEL:

Thomas M. Melsheimer
Texas Bar No. 13922550
Steven H. Stodghill
Texas Bar No. 19261100
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201
Tel. (214) 747-5070
Fax (214) 747-2091
melsheimer@fr.com
stodghill@fr.com

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2012, I electronically served all counsel of record with Mark Cuban's Motion for Summary Judgment, along with the accompanying Memorandum of Law and Appendix, electronically by using the electronic case filing system of the U.S. District Court, Northern District of Texas.

/s/ Brian D. Nysenbaum
Brian D. Nysenbaum